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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/922,504

08/03/2001

Christer Strom

P01,0247

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7590

09/22/2004

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/922,504
Filing Date: August 03, 2001
Appellant(s): STROM, CHRISTER

Christer, STROM
For Appellant

EXAMINER'S ANSWER

MAILED
SEP 22 2004
GROUP 3700

This is in response to the appeal brief filed 14 June 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 5 and 6 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,862,802

BIRD

1-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4 and 7 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on 12 January 2004.

Bird teaches a ventilator comprising: an inspiratory unit (col. 29, lines 48-62); an expiratory valve 143; a control unit for controlling the inspiratory unit and expiratory valve to regulate flow of breathing gas by generating a recruitment phase (col. 2, lines 45-48; col. 3, lines 1-4; col. 4, lines 8-10) with a plurality of breaths superimposed on an elevated basic pressure (col. 1, lines 48-51); wherein the control unit controls the inspiratory unit and expiratory valve to produce elevated basic pressure in a range from 10 to 80 cmH₂O (col. 75, lines 51-67 through col. 76, lines 1-9); and to generate the superimposed breathes at a pressure range from 1 to 10 cm H₂O (see figures); and to generate the increased breathing rate in a range from 50-200 breaths/minute (col. 83, lines 14-21); and to generate the recruitment phase for a duration in a range between 10-100 seconds (col. 76, lines 10-12).

Claims 5 and 6 rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 12 January 2004.

Bird teaches the ventilator as claimed in claim 1. It should be noted that Bird fails to teach wherein the control unit controls the inspiratory unit and expiratory valve to set the increased breathing rate as a percentage range between 110% and 1000%. However, the ventilator of Bird can be programmed to desired parameters. Therefore the ventilator of Bird is fully capable of performing the claimed limitations.

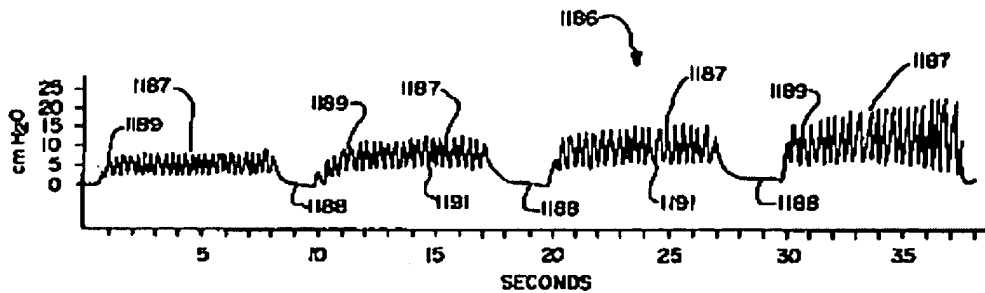


FIG.— 24

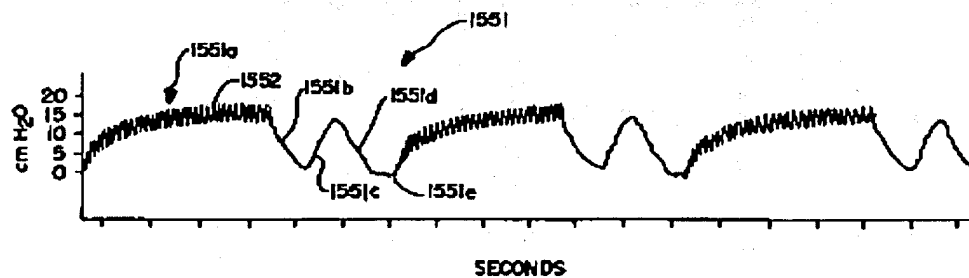


FIG.— 32

(see col. 76, lines 20-22)

(11) Response to Argument

The Appellant argues that the expiratory valve of Bird 5,862,802 is not involved in the operation of the ventilator. However the expiratory valve (143) is involved in controlling the pulses of oscillation frequency (col. 15, lines 10-67 thru col. 16, lines 1-5). Bird also teaches that the values are adjustable to control oscillation frequency (col. 15, lines 48-56).

The Appellant points out that the superimposed oscillation result from small volumes of gas being actively supplied and withdrawn with a reference to col. 3, lines 4-8. The Examiner could find no such evidence in the cited description. Regulated gas is delivered to the patient via nozzle 84 (col. 14, lines 11-17). Oscillations are produced

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over the regulated gas (col. 16, lines 25-33). The oscillations cause pressure increases. Nowhere is it found that gas is withdrawn.

The Appellant argues that there is no active control of the expiration valve. The Appellant sites valve 228. However, valve 228 is not the valve used in the rejection. Valve 143 is used and can be actively controlled (col. 15, lines 48-56).

The Appellant argues that Bird does not teach recruitment. Recruitment being: a pressure (usually higher than the normal inspiratory pressure for the patient), enabling them to remain open when exposed to a lower pressure during a subsequent period of treatment, as described in the specification pg. 1, fifth paragraph. Bird teaches such a procedure as seen in col. 2, lines 45-48, col. 3, lines 1-4 and col. 4, lines 8-10.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

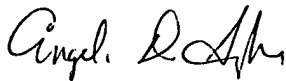


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